

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

July 25, 2003

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on July 25, 2003 at the offices of Procopio Cory Hargreaves & Savitch LLP in San Diego, California and by video conference at the offices of Orrick, Herrington & Sutcliffe LLP.

The following members were present in San Diego:

Radmila Fulton
Geraldine Valdez
Colin Wied

The following members were present in Sacramento:

Lynn Ernce
Judy Gibbs
Rob Harris
Paul Pascuzzi
Tom Phinney
Cliff Stevens

The following members attended telephonically:

Molly Baier
Dave Bertenthal
Lisa Fenning
Greg Lunt
Kathy Phelps
Dan Schechter
Tracy Schweitzer

Rob Harris called the meeting to order at approximately 10:00 a.m.

1. Approval of Minutes: June 20, 2003.

The minutes of the June 20, 2003 meeting were approved unanimously.

2. Discussion of Attendance, Participation, and State Bar Policy Thereon: “Good Cause,” misuse of the Mute Button, and other issues.

Rob reminded members of the State Bar policy on attendance and participation in meetings. Rob suggested that the Committee consider moving the meetings to a day other than Fridays if Fridays prove more difficult for members to attend.

3. Finalize Diversity Information Table.

Rob needs the information for the diversity table from those who have not responded to his prior inquiries. Some members voiced privacy concerns on age and race questions. Rob authorized the members with privacy concerns to submit the information without specifying age or race.

4. Nomination and discussion of ILC Secretary for 2004.

Rob nominated Paul Pascuzzi for ILC Secretary in 2004. Geraldine Valdez seconded the motion. There being no requests for discussion, the motion was unanimously approved.

5. Discussion of (a) Number of Available Slots (8 vs. 9), (b) Current Applications for Membership, and (c) Vote.

(a) **Number of Available Slots.** Due to the health issues with Perry Landsberg, Rob suggested that the Committee seek dispensation for an additional member. Hearing no opposition to that notion, Rob will follow up with the Executive Committee. Thus, the Committee has nine available slots for next year. Two of those slots were filled last meeting with the Committee votes approving Colin Weid and Mark Porter.

(b) **Current Applicants for Membership.** The Committee discussed the following applicants for the seven available slots: Howard Kollitz, Eve Karasik, Larry Jacobsen, Peter Munoz, Michael Koch, Jeffrey Shinbrot, Liz Berke-Dreyfuss, Brian Davidoff, and Donna Parkinson.

(c) **Vote.** The Committee voted to approve the following applicants for the seven available slots: Howard Kollitz, Eve Karasik, Peter Munoz, Michael Koch, Liz Berke-Dreyfuss, Brian Davidoff, and Donna Parkinson.

6. Subcommittee Organization: Legislation, Education, Publications, and Constituency/Outreach/Website.

(a) **Finalization of Subcommittee Membership.** All Committee members must be on at least one subcommittee. Rob asked for volunteers for those who have not already indicated their preference. The Legislation Subcommittee consists of: Robert Harris, Lisa Fenning, Greg Lunt, Judy Gibbs, Paul Pascuzzi, and Dan Schechter. The Education Subcommittee consists of: Peter Bronson, Molly Baier, Radmila Fulton, Kathy Phelps, Mark Porter, and Geraldine Valdez. The Publications Subcommittee consists of: Lynn Ernce and Tom Phinney. The Constituency/ Outreach/Website Subcommittee consists of: Dave Bertenthal, Bob Franklin, and Cliff Stevens.

(b) **Discussion of Subcommittee Members' Duties.** Rob covered the general duties of each subcommittee. The Legislation Subcommittee monitors proposed new legislation, gathers new legislation and updates on status for distribution for the monthly meetings, comments on proposed legislation, drafts reports, and anything

else related to proposed new legislation. The Education Subcommittee creates ideas for programs, formulates panels for programs, tracks deadlines, and possibly participates on panels. The Publications Subcommittee drafts articles for the Business Law News, works on the annual review and the California Legislative Bulletin, and works to have articles published. The Constituency/Outreach/Website Subcommittee works on restructuring the website, maintaining the website, and maintains and grows the constituency list.

- (c) **Assignment of Remaining Members to Subcommittees.** Any Committee member not already on a subcommittee as listed herein must respond to Rob by the next meeting or they will be assigned to a subcommittee.
- (d) **Election of Subcommittee Vice Chairs.** The organization and structure of the subcommittees are up to the members thereof. Rob recommended that a “vice chair” or other “leader” be appointed by the subcommittees for organizational purposes.

7. Programs

- (a) **State Bar Annual Meeting, September 4-7, 2003, Los Angeles, CA.** Radmila Fulton reported that the materials for the Bankruptcy/Family Law program being presented by Radmila and Judy Gibbs have been completed and submitted. Judy credited Radmila for taking the lead to complete the materials. Rob and Radmila will work on an e-blast to the Family Law Committee to advertise the program as it is primarily directed to that audience.
- (b) **Winter SEI, Santa Monica, CA, January 23-25, 2004.** The Committee will present two programs at the Winter SEI. Asset Sales for Non-bankruptcy Lawyers will be presented by Mark Porter and possibly others. Mark was not present to give a status report. Rob will follow up with Mark to get the program planning form completed by the September 23, 2003 deadline. The other program, Bankruptcy 101, will be presented by Geraldine Valdez and Peter Bronson and potentially two judges from the Central and/or Southern District. Lisa Fenning suggested Judge Bluebond. Geraldine reported that the materials are substantially completed since she and Peter put on a similar program in Monterey recently.
- (c) **State Bar 2004 Spring Meeting, Newport Beach, CA, May 14-16, 2003.** The deadlines have not yet been set and the location is still tentative. So far, the Committee is schedule to present one program at the Spring Meeting: When Fraud is an Element of a Bankruptcy Case by Sandy Lavignia and Tracy Schweitzer. The date of this program conflicts with the California Bankruptcy Forum, so we do not expect many bankruptcy attorneys to attend the Spring Meeting. Thus, the Committee should gear any program to non-bankruptcy lawyers. Judy Gibbs suggested that Rob raise the date conflict with the State Bar Planning Committee, because the conflict happens often. The discussion of other programs for the Spring Meeting was tabled for next meeting given the date conflict issues.

8. Website Report and Constituency Outreach Project.

- (a) **Continuing Reports on Obtaining Email Lists, Reciprocal Program Advertisements for Particular Areas.** The status of the various area contacts was discussed, with a direction to continue to follow up.
- (b) **Review of Report on Status of Website, Content and Discussion of Revisions of Same.** This topic was tabled as Mike Buckley was not present.
- (c) **Status of Migration of BLS Website to State of California Site.** This topic was tabled for next meeting.
- (d) **Discussion of Current Website Content and Updating to List Upcoming Meetings, Educational Programs and Congressional Matters re B.A.R.F.** This topic was briefly covered in the discussion of the duties of the subcommittee.

9. Progress Reports on Current Projects.

- (a) **AB 182.** Rob reported that this has passed the Senate and the Assembly but has not made it to the Governor's desk.
- (b) **AB 690.** Molly Baier reported that this bill was filed with the Secretary of State's office on July 24, 2003, having been approved by the Governor the day before. The bill passed with minor amendments.
- (c) **Status of Badges of Fraud A.L.P.** The ALP is completed and in the hands of Jerry Grossman. Jerry will send it to Terry Miller for approval by the State Bar Board of Governors.

10. New Projects.

- (a) **Report on Partnerships Law Committee ALP.** Rob alerted the Partnership Law Committee that the ILC may have issues with the ULPA. The Committee discussed the provision at §405, which essentially requires a judgment creditor of a general partner of a limited partnership to exhaust remedies against the limited partnership prior to execution against the general partner's assets. However, the language used in §405 appears to be overly broad and may raise *ipso facto* type bankruptcy issues. Rob will check with the Partnership Law Committee to obtain more information about this provision.
- (b) **Updated Model Real Estate Order.** The Committee review of the now separated order and findings was tabled until next meeting to allow more time for review. Judy Gibbs and Paul Pascuzzi will work on instructions for the use of the order and findings. Lisa Fenning pointed out that proper evidence will be needed to support many of the findings, especially the "good faith purchaser" finding. Judy also will contact the title company attorneys who reviewed the order previously to determine their interest in reviewing the broken out order and findings.

- (c) **C.C.P §697.530 Perfecting Liens on Foreign Corporations.** Rob announced that there is nothing new to report on this project.
- (d) **H.R. 975.** Rob reported that he is working on a comment and draft ALP focusing on the attorney liability and chapter 11 dismissal issues. Nothing new to report at this meeting.
- (e) **C.C.P. §708.110 et. al. Secret Liens.** Nothing new to report at this time.

11. Publications.

- (a) **Business Law News.** For the umpteenth time, congratulations Tom Phinney for his article published in the BLN.
- (b) **Status Report on New Articles for BLN.** Rob to follow up on the issue of delay in publication before any other articles are drafted.
- (c) **California Legislative Bulletin.** The deadline was missed and Rob will report to the Executive Committee on this issue.
- (d) **Annual Review.** Rob to follow up on the delay in publication here as well.

12. Legislative Liason's Report.

- (a) **Recent Bills—S.B. 804.** The bill appears to have passed raising the elderly and disabled exemption amounts.
- (b) **Federal Bills.** (i) S. 832. This bill deals with amendments to the preference and fraudulent conveyance provisions of the Bankruptcy Code. Paul Pascuzzi and Mark Porter will discuss their ideas and present them to the Committee at the next meeting. (ii) H.R. 2. This bill deals with the privatization of IRS collections. Paul Pascuzzi volunteered to ascertain the status of this bill for the next meeting. (iii) H.R. 2120. This bill deals with the netting provisions that were included in the B.A.R.F. Prior reviews of these provisions were acceptable to the Committee. Paul Pascuzzi volunteered to ascertain the status of this bill for the next meeting. (iv) H.R. 2706 and 51331. These bills deal with tax issues related to asbestos and consolidated companies' use of NOL carryovers. Lisa Fenning reported that these bills are not likely to pass in their current forms and they deal with issues that are not likely to be something on which the State Bar would be able to take a position. The Committee agreed. (v) H.R. 1529. This bill dealt with the abuse of involuntary petitions. The bill appears to be dead since it did not propose anything that could not already be used to prevent abuse.

13. New Business.

- (a) **Repeal of the Bulk Sales Law (UCC Art. 6).** Sandra Shippey from the UCC Committee asked the Committee's views on the UCC Committee's position that the Bulk Sales Law should be repealed. The law has been repealed in 42 states already. Dan Schechter was very much in favor of repeal. Tom Phinney suggested that the Committee review the articles arguing for repeal before taking

an official position. Dan will circulate those articles. Rob suggested that if the Committee agrees with the UCC Committee's position, both committees could jointly sponsor an ALP.

- (b) **Judicial Lien Issues.** Judy Gibbs raised the issue of judgment liens that did not attach to any real property prior to a bankruptcy filing but subsequently show up on real property later acquired. These liens create a problem because they show up on title reports and are not avoidable under §522 in the bankruptcy because the debtor did not own the real property at the time the petition was filed. Radmila relayed experience she has had convincing the title company or the creditors attorney that the lien is invalid because it never attached to any property and the underlying debt was discharged. Radmila suggested reopening the bankruptcy case and filing a motion or adversary proceeding to avoid the lien as a violation of the discharge injunction.
- (c) **Location and Date of October Meeting.** Geraldine suggested that the October 2003 meeting be held at her office on October 15, from 1-3 p.m. to avoid interference with the NCBJ. The Committee agreed. Another location will be set for a video conference, which will be selected after determining the place with the most attendees.
- (d) **Use of Video Conference.** The Committee briefly discussed the use of the video conferencing in conjunction with the telephone conference call. Generally, the Committee was pleased with the results.

Adjournment. The meeting was adjourned at 12:15 p.m.

Respectfully submitted,

Paul Pascuzzi, acting Secretary
for Peter Bronson